
DECONSTRUCTING SENTENCING REMARKS IN JUDGEMENTS RELATING TO OFFENCES AGAINST WOMEN: A DISCOURSE IN THE CASE OF KANWARPAL SINGH GILL V. RUPAN DEOL BAJAJ AND ORS. 1989

Shreya Srivastav, LLM, WBNUJS

ABSTRACT

The ability to separate preconceived notions while forming a decision is a crucial requirement for a judge. However, unconsciously their opinions and biases percolate into the way any issue is adjudicated by them. It is generally seen that these prejudices are displayed in abundance in the judgments relating to the offences against women. The case at hand, that is, [KPS Gill v. Rupan Deol Bajaj, 1989] is entirely based on these inherent biases that the judges unconsciously harbour and thus, is a fit case for this discussion because unlike other cases where such prejudices are discovered by reading the obiter dicta, here the ratio decidendi of the judgment itself displays in entirety the lack of application of judicial mind and excessive reliance on patriarchal notions by the High Court. This article discusses in detail each argument and ground of decision of the case to draw inferences which corroborate the fact that even the brightest minds of the country are not immune to misogynistic conditioning of the society. The article also illuminates the various dimensions of gender bias that women across all caste, class and position have to face at a societal level in reference to the subjugation of their individual rights in the name of larger interests of the nation.

Keywords: Sentencing remarks, Gender Bias, Obiter Dicta, Ratio Decidendi, Prejudice

Introduction

The ability to separate preconceived notions or biases while building a rationale or forming a decision is a crucial requirement for a judge in pronouncing a sound judgment. However, unconsciously one's opinions and biases percolate into the way any issue is adjudicated. This is so because our limited knowledge and experiences shape the truth and reality we perceive and even the judges or the members of the legal fraternity are not immune to this human condition. These reflections are generally seen in the remarks, popularly known as obiter dicta, made by the judges during the trial or in the judgment. In a way, these remarks are the key to the mind of the judges and discloses the manner in which they perceive and adjudicate a certain matter. As obiters are casual observations and do not carry any legal weight, they can only aid in deciphering the disposition of the judges and their thought processes. On the other hand, the ratio decidendi is the fulcrum and foundation of the case and on it stands the doctrine of stare decisis. Since it has a precedence value, extra caution must be taken to ensure that no askew notions or prejudices find shelter in such reasoning. Surprisingly however, the ratio in the case of [KPS Gill v. Rupan Deol Bajaj, 1989]¹ is entirely based on the inherent biases that the judges unconsciously harbour and thus, is a fit case for this discussion.

It is generally seen that the cases in which the aforementioned prejudices are displayed in abundance are the judgments relating to the offences against women. The age long disparity between the two sexes has indeed left a predominantly large impression on the judicial precedents. The preordained gender roles and the gravity of misconduct that gives rise to a social or legal intervention always forms the undercurrent of such adjudication. To add to that, the tendency of blatant trivialisation of female suffering and victimisation of the aggrieved during investigation and trial in every way only increases the difficulty that women have to face in order to obtain justice. It is also crucial to acknowledge that such situation in part has arisen due to the under representation of women in both the bar and the bench. As a result, the unique female perspective in adjudication of such cases has largely remained absent from the Indian Jurisprudence resulting in cases such as that of [KPS Gill v. Rupan Deol Bajaj, 1989].

Facts, Arguments and Decision of the Case

In order to dissect this particular judgment, it is essential to understand the background facts. The accused Mr. KPS Gill was the Director General of Police, Punjab with a glorious service

¹ (1989) 96 (2) PLR 292

record. He was single-handedly credited with eradicating terrorism in Punjab and thereby nicknamed 'Supercop'. The aggrieved Mrs. Rupan Deol Bajaj was an IAS Officer of the Punjab Cadre who was harassed by the accused Mr. KPS Gill at a social gathering in presence of various dignitaries. On the night of 18.07.1988, Mrs. Bajaj along with her husband went to a dinner organised at the Financial Commissioner's House. It is an admitted fact that both the men and women present there had had a few drinks before dinner and were sitting separately in their respective semi-circles when, at around 10 pm, Mr. Gill approached Mrs. Bajaj and insisted her to come with him stating that he needs to talk to her about something. She got up and left the circle to speak to him. As soon as she began to sit on the chair next to him, he pulled the chair close. She put the chair back in the original place and began to sit when he repeated the same action. This behaviour made Mrs. Bajaj uncomfortable and she left his presence.

Then, after some time he came to Mrs. Bajaj who was sitting with other women, stood extremely close to her, made an action with the crook of his finger asking the aggrieved to stand and assertively said, "You get up. You come along with me". When she objected to this behaviour and demanded him to retreat, he remained standing in front of her and commanded her to come along with him. The accused was standing in such a way that the aggrieved could not get up from the chair without her body touching his. Since there was no other way, she pushed her chair back and turned around to leave when the accused slapped her on her posterior in front of everyone.

Subsequent to this incident, a departmental complaint was made by the aggrieved and after 11 days an F.I.R was registered against the accused on the charges of outraging the modesty of a woman under section 354 and Section 509 of the Indian Penal Code, 1860 (IPC) that is word, gesture or act intended to insult the modesty of a woman. It was however alleged by the aggrieved that since the accused was a renowned high level IPS Officer, the proceedings against him were neither promptly initiated nor transparently continued. In the meantime, the accused approached the High Court to quash the registered F.I.R. It is this impugned judgment that is primarily being discussed here.

To truly comprehend the decision, the arguments of this particular case must be discussed at length. There were various arguments that were advanced on behalf of the petitioner (Mr. KPS Gill) before the High Court and the very first one was that both the aggrieved and the accused were well known to each other and that is the reason why the aggrieved left her seat initially to

go and talk to him. It was further explained that “*what happened thereafter was only display of eagerness on the part of the Petitioner to prevent over-hearing of their talk by someone else and show of resentment over Mrs. Bajaj’s conduct in avoiding the accused instead of listening to him, for which she had initially come to sit closer to him.*”²

Secondly, it was argued that “*there were around 48 persons present including 24 ladies. It sounded both unnatural and unconscionable that the accused would attempt or dare to outrage the modesty of the aggrieved in their very presence inside the residential house of Financial Commissioner.*”³ Thirdly, it was asserted that “*there was complete absence of mens rea to indulge in outraging the modesty of the aggrieved and that a sudden accidental slip, even if any, by the Petitioner must of course be ignored in terms of Section 95 of the Indian Penal Code*”⁴. Last but not the least, it was contended that “*reaction of the woman whose modesty is alleged to have been outraged is not relevant for determining the existence of prime facie case against the accused. Culpable intention of the accused is the crux of the matter.*”⁵

Based on the aforementioned arguments the Hon’ble High Court pronounced the impugned judgment and quashed the F.I.R. against the accused on the grounds mentioned as follows:

- (i) the allegations did not disclose any cognizable offence;
- (ii) the nature of harm allegedly caused to the accused did not entitle her to complain about the same in view of Section 95 IPC;
- (iii) the allegations were unnatural and improbable;
- (iv) the Investigating Officer did not apply his mind to the allegations made in the F.I.R., for had he done so, he would have found that there was no reason to suspect commission of a cognizable offence, which was the sine qua non for starting an investigation under Section 157 Cr. P.C.; and
- (v) there was unreasonable and unexplained delay of 11 days in lodging the F.I.R.⁶

² Kanwarpal Singh Gill Vs. Rupan Deol Bajaj and Ors., 1989, para 4

³ Supra note 2 at Para 6

⁴ Supra note 2 at Para 4

⁵ Supra note 2 at Para 7

⁶ Kanwarpal Singh Gill Vs. Rupan Deol Bajaj and Ors., 1995 pg. 2

Analysis of the Arguments and Grounds of the Decision

Prima facie perusal of the aforementioned arguments and reasons afforded by the court displays that the judicial conscience and objectivity was askew in determining the present case. Taking the first argument itself, it is provided that the parties were known to each other and, thus, it was merely a display of eagerness on the part of the accused to talk to the aggrieved and a resentment over her conduct for not listening to him. This argument cannot by any stretch of imagination justify or condone the commission of an act which outrages the modesty of a woman. It portrays in subtle tones an obvious domination over the disputable weaker sex. To be able to argue before the court that the offence was given rise to because of the fact that the aggrieved did not listen to the accused, in circumstances that warrants no duty to listen to a subordinate officer, exhibits a blatant disregard to female autonomy, dignity and her right of liberty. This presumptuous authority over a female is the reproduction of the attitude of the patriarchal society which is crystalised into the daily behaviour of individuals⁷ irrespective of their class, education and profession. Sadly, this behaviour not only goes unnoticed but also gains encouragement when no action is taken against it.

Next, it was observed by the court that it is unnatural and improbable that the accused would dare to outrage the modesty of a woman in the presence of 48 dignitaries. To draw such absurd assumption and rely on it for quashing the F.I.R. entirely, without a proper trial, cannot be in any way accepted as a sound decision. To refer such a circumstance as unnatural hardly makes any sense and demands detailed reasons on behalf of the court which regrettably was not provided in the case at hand. In addition, it is a matter of conjecture whether the offence was rendered improbable because of the designation, popularity and favouritism of the accused or due to any other reason of fallacious origin. The facts of the case prima facie disclose the ingredients of the offences under Section 354 and 509 of IPC. Declaring such incident as improbable and unnatural by disregarding the facts in its entirety, outrightly assumes that the aggrieved is a liar and robs her of the opportunity to prove her case on merits and obtain justice.

It was further underlined by the High Court that the facts of the case did not disclose any cognizable offence. This observation was made on the basis of the argument that there was no mens rea on the part of the accused to outrage the modesty of the aggrieved. As we know,

⁷ Daniela Grignoli, Danilo Boriati, Mariangela D'Ambrosio; "From the patriarchal vision to the empowerment of women through secondary victimization and victim blaming", Vol 8 Issue 1, *Sociology and Social Work Review*, pp. 103 - 113 (2024)

intention cannot be proved by direct evidences and can only be inferred from the overt actions. When the facts of the present case disclose that the accused made multiple advances by coming close to the aggrieved in spite her objection and then subsequently hit her on her posterior in presence of various guests when she was escaping his presence, these facts at the minimum establish a prima facie case sufficient enough to proceed to trial for charges under Section 354 and 509 IPC. It has to be taken into consideration that this incident occurred in the year of 1988 when the society was even more conservative than it is now. Furthermore, the aggrieved was an IAS officer. The fact that she was hit on her posterior by another officer who is subordinate to her that too in the presence of around 48 dignitaries must have been extremely humiliating and degrading to her as a woman. This act of hitting her in itself amounts to violation of her personal boundaries and an assault to her dignity. Hence, the ground of non-disclosure of cognizable offence for quashing the F.I.R cannot stand on its legs.

Also, the decision taken by the Hon'ble High Court that this incident was an accident or slip and should be considered under section 95 IPC is beyond comprehension. The attitude to treat offences against women as trivial and fictitious is regressive and hampers her right to equality and access to justice. Moreover, there is a tendency to question the reasonableness of a woman, if a complaint is made by her for an offence which is not conventionally grave. This standard of so called 'reasonable woman'⁸ is adopted by several courts to determine whether an environment is sufficiently hostile to warrant claims of harassment. However, it must take into consideration that the perception of men and women differ when it comes to potentially harassing behaviour and acknowledgment of such distinction is extremely vital. Due to our societal conditioning and misogynistic mindset, the transgression of boundaries is not properly acknowledged by men in many circumstances. It is considered as a benign misconduct which does not necessarily warrant criminal penalty and the present case unfortunately exhibits the same trend.

This argument has further been substantiated by certain studies that show that women and men both agree on the culpability of blatantly grave behaviours involving sexual coercion and harassment but there exists a gender gap when it comes to the perceptions regarding more subtle or ambiguous behaviours of sexual nature.⁹ Men tend to trivialise the effect of such

⁸ Stephanie Riger, Pennie Foster-Fishman, Julie Nelson-Kuna and Barbara Curran "Gender Bias in Courtroom Dynamics" Vol. 19, *Law and Human Behaviour*, pp. 465-480 (1995)

⁹ Supra note 7

incidents on women as they consider such acts to be harmless or excusable but such transgressions adversely affects women's psychological and emotional health. So, just because the alleged offences in question are not as grave as that of physical violence, rape or acid attack etc. it must under no circumstance mean that it comes under the ambit of Section 95 IPC and deserve no punishment.

Lastly, it was argued before the court that only the intention of the accused shall be taken into account while adjudicating the offence of outraging the modesty of a woman and not the reaction of the aggrieved. While it may be true as per the ingredients of Section 354 and 509 IPC but there is a larger discussion at hand here. In this present case, the petition is brought before the High Court for quashing of the F.I.R. The issue that is adjudicated at this stage is whether or not an offence under Section 354 and 509 IPC is made out on a prima facie basis. If at all, the commission of the offence has taken place has to be evaluated keeping in mind the circumstances under which it occurred. It involves facts regarding the occasion and opportunity of commission¹⁰ of the offence along with previous and the subsequent conduct of the parties¹¹ which includes the reaction of the victim as well. These facts form a chain of events on the basis of which a decision has to be taken. By stating that the reaction is irrelevant, the court overlooks the cause-and-effect dynamic which extracted such a reaction. Further, it aids the courts in making out what offence has been committed against the victim. Dismissing it entirely in a way insinuates that an aggravated reaction was given by the delusional aggrieved in an effort to make a minor incident appear bigger than it really was.

This notion however represents a very orthodox and regressive view. When modesty of a woman is in question, one has to take into consideration the effect that the incident has on her. Unlike other offences where the actus reus is apparent, outraging of the modesty of a woman causes degradation of the value of a woman in her own eyes in addition to the societal or external humiliation. Therefore, what constitutes outraging of a women's modesty cannot be measured on the standards perceived by men who have evidently different perception as compared to women. Hence, it would not be improper to state that the standard of evaluation of these matters is not entirely fair. It is in situations like these that the dearth of unique female perspective in adjudicating such sensitive cases is immensely felt.

¹⁰ Indian Evidence Act, 1872, (Act No. 1 of 1872), s. 7

¹¹ Indian Evidence Act, 1872, (Act No. 1 of 1872), s. 8

Reversal of the judgment by Hon'ble Supreme Court

After passing of the impugned judgment by the High Court, it was fortunately reversed by the Hon'ble Supreme Court subsequently¹². The court observed that the impugned judgment suffered from a patent defect and directed the Chief Judicial Magistrate, Chandigarh to try the case on the basis of the F.I.R registered. In making this decision, Hon'ble Supreme Court clarified that 'modesty' has not been defined under IPC and hence, placed reliance on the judgment of [State of Punjab vs. Major Singh]¹³ for its definition. This precedent elaborated that *the essence of woman's modesty is her sex* and she possesses it since her birth. In addition, the court opined that *the ultimate test for ascertaining whether modesty has been outraged is to see if the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman.*¹⁴

The court also affirmed that the accused held culpable intention for the commission of the offence and even if no such intention is presumed the accused must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society. Also, nothing in the F.I.R. indicated that the indecent act was committed by the accused accidentally or by mistake. For these aforementioned reasons, Hon'ble Court observed that the offence under Section 354 and 509 IPC are made out. The court emphasised that the trauma undergone by the aggrieved does not in any way make the matter a subject of Section 95 IPC. It declared that *Section 95 IPC cannot have any manner of application to an offence relating to modesty of woman as under no circumstances can it be considered trivial.*¹⁵

Discourse after the Supreme Court Judgement

After the Hon'ble Supreme Court, reversed the impugned judgment and directed the Chief Judicial Magistrate to try the case, the aforesaid court convicted the accused under Section 354 IPC and 509 IPC. He was sentenced to 3 months rigorous imprisonment under Section 354 IPC and 2 months simple imprisonment under Section 509 IPC but both sentences were to run concurrently. Thus, the accused only had to spend 3 months in prison. Yet there was a general sense of shock at the severity of the sentence. Sentencing of a 'national hero' to rigorous

¹²1995 SCC (6) 194

¹³ AIR 1967 SC 63

¹⁴ Supra note 11 at pp. 7, 8

¹⁵ Supra note 11 at p.10

imprisonment broke open the pandora's box giving rise to a multitude of polarised public opinions.

It was reported in the nationally circulated newspaper after the pronouncement of the judgment that *"If today Punjab is rid of militancy which had taken a heavy toll of human lives, a great deal of the credit goes to Gill. It somehow makes the law of the land look grotesquely odd and incongruous that a man who has done service to the country by ridding a state of the dread and oppression of terrorism should have to spend time in jail for a minute's exuberance provoked by the charms of an attractive working woman. Enough is enough and a simple apology graciously accepted should have end the matter once and for all."*¹⁶

The above discourse makes it clear why there is such difficulty faced by women in order to secure punitive actions in cases of sexual harassment. The biased judiciary and state instrumentalities play a dominant role in consistently undermining women's interests. Furthermore, the public discourse and victim shaming additionally burdens the aggrieved and discourages her in her pursuit for justice and even afterwards as in the present case. Here, the aggrieved had to endure public shaming after procuring the judgment in her favour as the voice raised by her against injustice was equated with vindictiveness, IPS-IAS rivalry and anti-patriotism as she tarnished the image of a national hero.

These opinions shed light on this ingrained morality which defines the state or national interest as supreme and all other interests as subservient to it. In defending a national hero, this narrative was stretched far too thin, even to the extent that it defended the commission of an offence against a woman by such officer in the name of patriotic sentiments. State must not become a mechanism to subsume human rights in the name of larger interests of the nation. The constitutional courts by its flawed decision must not propagate a notion that the tired and weary soldiers, heroes and policemen have a right to misbehave, manhandle and abuse women occasionally with words and gestures having sexual overtones and all of this must be shrugged off as a joke or be suffered in silence¹⁷ because such officers perform the 'sacred national duty'.

¹⁶ Kalpana Kannabiran, Vasanth Kannabiran, "Gendering Justice", Vol. 31, No. 33, Economic and Political Weekly pp. 2223-2225, (1996)

¹⁷ Supra note 15

Conclusion and Way Forward

We can infer from the discussion above that our society has institutionalised gender inappropriately and promoted patriarchal hegemony on multiple occasions. These biases and notions have sedimented in our minds in such a way that it unconsciously permeates in our critical decisions. However, the role and responsibility of the judges, especially those holding constitutional courts, are so crucial that active efforts must be made by them to ensure that they do not come to a decision under the hypnosis of these dehumanising and degrading social practices. Women's right and civil liberties must not be weighed on the conventional parameters that serves the patriarchal perception. Also, the state interest must not be used as an excuse to undermine women's individual interest which closely relate to her right to life, equality and dignity. It is the duty of the judges to check the transgressions or violation of the rights of the women. Thus, the judges cannot be expected to harbour sexist, biased or regressive opinions which hamper gender equality, however subtle they may be.

The judgment of [KPS Gill v. Rupan Deol Bajaj, 1989] (High Court) is one of the many cases where such prejudices against women has been witnessed. In this situation, fortunately, the judgment was overruled, however, many at times that is not the case. Even so, this progressive judgment could not shield the aggrieved from public shaming and humiliation for having a national hero being sentenced to jail. Such is the situation of women in our society. In addition, it must also be duly considered that the victory of the aggrieved was largely due to her status and position as an IAS officer. It would have been inconceivable for any other ordinary woman to stand against a person having such popularity, authority and national support and face the hardships of a trial. This, as a matter of fact, is a sad reality, that justice still is accessible only to the powerful few and not to the rest.

Hence, steps must be taken to ensure that access to justice is not hindered by any socio-political constraints. Furthermore, at an institutional level policy must be incorporated to train and sensitise the judges so they adjudicate the matters in a gender positive manner. Also, the goal of adequate representation of female judges in all courts must be realised to ensure incorporation of their unique and diverse opinions especially when it comes to the cases relating to offences against women amongst others. To sum up, judges must be aware that any statement or any decision that they make carries a huge weight and leads to varied consequences. They not only interpret the law but in doing so inevitably shape our collective

consciousness and morality. They represent the best of our society and are looked up to therefore, our judiciary must have progressive ideas that take our country forward.